

MAR 17 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHAD MACKENSTADT,

Defendant - Appellant.

No. 05-30606

D.C. No. CR-99-00053-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted March 8, 2006**

Before: CANBY, BEEZER and KOZINSKI, Circuit Judges.

Chad Mackenstadt appeals from the 12-month sentence the district court imposed upon revocation of his supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Mackenstadt contends that the 12-month term of incarceration imposed exceeds the term permitted by the statutory maximum sentence for his underlying offense under *United States v. Booker*, 543 U.S. 220 (2005). He argues that *Booker* requires that offenses must be classified under 18 U.S.C. § 3559(a) using the maximum term allowed by the United States Sentencing Guidelines, rather than the maximum term authorized by the statute describing the offense. We reject Mackenstadt's contention. See 18 U.S.C. § 3559(b) (stating that "the maximum term of imprisonment is the term authorized by the law describing the offense"); see also *United States v. Murillo*, 422 F.3d 1152, 1154 (9th Cir. 2005) (rejecting an attempt to extend *Blakely v. Washington*, 542 U.S. 296 (2004), to modify a crime's *potential* punishment for purposes of determining whether the crime qualifies as a predicate offense under 18 U.S.C. § 922(g)(1)).

AFFIRMED.